IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
APPEAL FROM ORDER NO. 88 OF 2007
WITH
CIVIL APPLICATION NO.132 OF 2007
IN
APPEAL FROM ORDER NO.88 OF 2007

Ram Lakhan Harihar Singh .....Appellant.

V/s

Joga Singh Sadhu Singh Bains & Anr. .....Respondent.

Mr. S.S. Swami for the appellant.

Mr. S.R. Singh for Respondent No.1.

CORAM: A.M. KHANWILKAR, J.
DATE : 27th February, 2007

P.C:

1. Heard Counsel for the parties. Perused the relevant record. I see no reason to depart from the finding reached by the Trial Court in para 10 of the impugned judgment that the plaintiff's structure was demolished way back on 11/10/19986. No document has been produced by the plaintiff to establish existence of the structure at the suit site which is described as Survey No.45, Hissa No.6, C.T.S. No.336 lying and situated at Village Borla, Tal. Kurla, Govandi,

Mumbai 400 088 facing towards West by 3' drainage/gutter and also facing towards West Waman Tukaram Patil Road. Counsel for the appellant would rely on document which is Registration Certificate of Establishment pertaining to years 1987 to 1989 and 1990 to 2006 at pages 58 and 60 respectively. Both these documents are in relation to premises situated at Ashok Nagar, J.V. Garage Compound, W.T. Patil Marg, Govandi; and this description , in no way, corresponds with the description of the suit premises in the prayer clause. Counsel for the appellant was called upon to invite my attention to any averment in the plaint that both these descriptions are in respect of the same premises. Counsel for the appellant fairly concedes that there is no such averment in the plaint. Thus understood, there is no reason to depart from the conclusion reached by the court below that the plaintiff has failed to produce any document to establish existence of the structure at the suit premises. Counsel for the appellant also pressed into service document which is a Ration Card at page 72. Once again, the address given in this document is the same as the one referred to in the Registration Certificate of the Establishment which has already been considered in the earlier part of this order.

2. There is one more reason why the appellant is disentitled for any discretionary relief. Inasmuch as, the appellant filed subsequent suit without disclosing factum of refusal of ad-interim relief in the earlier suits. In other words, appellant approached the Court with unclean hands. On this ground alone, the appellant does not deserve any discretionary order.

3. Besides, relief claimed in the Notice of Motion, if granted, is final relief in terms of amended prayer clause (cc). In other words, mandatory order cannot be granted at this stage of the proceedings in favour of the party in the fact situation of the present case.

4. Counsel for Respondent No.1 fairly states that in the event the appellant succeeds in the suit, Respondent No.1 would provide suitable accommodation to the appellant as may be directed by the Court.

5. Taking over all view of the matter, no interference is warranted in this Appeal. The same is dismissed.

6. In view of the above order, Civil Application is disposed of.

A.M. KHANWILKAR, J.